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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD EDWARD HOLLIS,

Defendant and Appellant.

2d Crim. No. B212842
(Super. Ct. No. 1208293)
(Santa Barbara County)

Ronald Edward Hollis appeals from the judgment entered after a jury convicted him on two counts of inflicting corporal injury on a spouse (Pen. Code, § 273.5, subd. (a) – counts 1 and 5);¹ one count of making criminal threats (§ 422 – count 2); one count of assault with a deadly weapon (§ 245, subd. (a)(1) – count 3); one count of battery with serious bodily injury (§ 243, subd. (d) – count 4); one count of false imprisonment by violence or menace (§§ 236, 237, subd. (a) – count 6); and five counts of misdemeanor battery on a spouse (§ 243, subd. (e)(1) – counts 7 through 11). As to count 1 (corporal injury on a spouse), the jury found true an allegation that appellant had inflicted great bodily injury. (§ 12022.7, subd. (e).) Except for count 4 (battery with serious bodily injury), the trial court imposed consecutive sentences on all counts. The sentence on count 4 was stayed pursuant to section 654. The aggregate sentence was 17 years, 4 months (12 years, 4 months for the felonies plus 5 years for the misdemeanors).

¹ All statutory references are to the Penal Code.

Appellant contends: (1) count 10 (battery on a spouse) must be reversed because it is a lesser included offense of count 1 (corporal injury on a spouse); (2) the sentences on counts 2 (making criminal threats), 6 (false imprisonment by violence or menace), and 10 (battery on a spouse) must be stayed pursuant to section 654; and (3) the federal double jeopardy clause precludes his conviction on count 4 (battery with serious bodily injury). We modify the judgment to stay the sentence on count 6 for false imprisonment by violence or menace. In all other respects, we affirm.

Facts

On October 2, 2005, Appellant and Evette Aragon were married in Las Vegas. After their marriage, they travelled to various destinations in California. In the middle of November 2005, they were hiking along a trail near Refugio State Beach. Aragon was not feeling well. She asked appellant if she could stop and rest. Appellant "called [Aragon] a fat, lazy bitch" and slapped her across the face. (The slap was the basis for the battery charged in count 7.) Later, when Aragon asked appellant for a drink of water, he "hit [her] in the back of the head with [a] bottle." (This blow was the basis for the battery charged in count 8.) Aragon kept walking, but she stumbled and almost fell to the ground. Appellant threw rocks at her. The rocks hit Aragon in her arms, stomach and legs. (The throwing of the rocks was the basis for the battery charged in count 9.)

Appellant "dragged [Aragon] by the arm" up a small trail that led to the top of a cliff. They "stopped about midway," and appellant said that "he was going to throw her down that cliff." He remarked that "it was a perfect place to hide a body" and that "nobody would find [her] there." Aragon "pleaded" with appellant not to throw her off the cliff. She "promised that [she] was going to do what he wanted."

Appellant and Aragon turned around and walked away from the cliff. Aragon was "terrified." As they continued walking, Aragon "stumbled, and . . . kind of fell behind." Appellant punched Aragon in the stomach with a metal hook and said that "he ought to bash [her] head in with it and leave [her] there." (The blow to the stomach was the basis for the battery charged in count 11.)

After walking for about a mile, Aragon stumbled and fell. Appellant grabbed her by the hair, dragged her six or seven feet, and threw her down on the ground. (These acts were the basis for the battery charged in count 10). Appellant then sat on Aragon's stomach and strangled her. Aragon was unable to breathe and lost consciousness. When she awoke, appellant was slapping her across the face. Appellant said, " 'Come on, let's go.' " But Aragon was unable to get up. Appellant slapped her, sat on her stomach, and strangled her a second time. Aragon lost consciousness and urinated on herself. When she awoke, appellant said, " 'I'm surprised, because most guys usually shit themselves when I do this.' " (The strangling of Aragon was the basis for two counts: count 1 – inflicting corporal injury on a spouse with a great bodily injury allegation, and count 4 – battery with serious bodily injury.)

Appellant told Aragon that if she "didn't get up and come with him now, then [she] wasn't going anywhere at all." Appellant said, " 'This would be the perfect place to hide a body. Couldn't see you from the freeway, wouldn't notice you from a train.' " Aragon was "petrified" that appellant "was going to kill [her] and just leave [her] there."

Aragon started walking toward a road that led to a highway. (2RT 169-171) Appellant grabbed Aragon's hair, and she fell to the ground. Appellant kicked Aragon in the head. (The kick was the basis for count 5 – inflicting corporal injury on a spouse.)

Aragon got up and continued to walk toward the highway. Appellant put his arms around Aragon's chest and throat and said that she "was never going to make it to the highway." She "felt something sharp going across her throat." Appellant had cut her with a razor blade. (The cut to Aragon's throat was the basis for count 4 – assault with a deadly weapon.)

Appellant "turned around and walked away." Aragon reached the highway and contacted a police officer.

Lesser Included Offense

Appellant contends that his misdemeanor battery conviction on count 10 must be reversed because it is a lesser offense necessarily included within the greater offense of corporal injury on a spouse charged in count 1. "An individual may not be convicted of

both a greater offense and a necessarily included lesser offense [citation]; '[i]f the evidence supports the verdict as to a greater offense, the conviction of that offense is controlling, and the conviction of the lesser offense must be reversed' [citation]." (*In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1742.) But "the rule that a defendant may not be convicted of a greater and lesser offense applies only when the crimes arise from the same conduct." (*People v. Smith* (1998) 64 Cal.App.4th 1458, 1470.)

The offenses charged in counts 1 and 10 did not arise from the same conduct. The battery was based on appellant's acts of grabbing Aragon by the hair, dragging her six or seven feet, and throwing her down on the ground. The infliction of corporal injury was based on the strangling of Aragon while she was on the ground. The strangling was an independent act that began after the battery had been completed.

Section 654

Appellant argues that section 654 required the trial court to stay the sentences on counts 2 (criminal threats), 6 (false imprisonment by violence or menace) and 10 (battery on a spouse).² Pursuant to section 654: "A course of conduct that constitutes an indivisible transaction violating more than a single statute cannot be subjected to multiple punishment. [Citation.]" (*People v. Martin* (2005) 133 Cal.App.4th 776, 781.) "It is defendant's intent and objective, not the temporal proximity of his offenses, which determine whether the transaction is indivisible. [Citations.] . . . [I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.] [¶] If, on the other hand, defendant harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective,

² Section 654, subdivision (a), provides in relevant part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' [Citation.]" (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

"Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.] We review the trial court's determination in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence. [Citations.]" (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

Criminal Threats

During closing argument, the prosecutor told the jury that the main threat was the threat to throw Aragon off the cliff. But if the jury believed that another threat was more compelling, the jury could select the other threat as the basis for the criminal threats charge. According to the prosecutor, appellant made three additional criminal threats: (1) when he punched Aragon in the stomach with a metal hook and said that "he ought to bash [her] head in with it and leave [her] there"; (2) when, after strangling Aragon, he said that if she "didn't get up and come with him now, then [she] wasn't going anywhere at all," and " '[t]his would be the perfect place to hide a body' "; and (3) when he put his arms around Aragon's chest and throat and said that she "was never going to make it to the highway." The court instructed the jury that it must unanimously agree on the specific act constituting the criminal threats offense.

Substantial evidence supports the trial court's implied finding that appellant's objective in making the criminal threats was independent of and not merely incidental to his objective in committing the misdemeanor batteries, the assault with a deadly weapon, and the crimes of inflicting corporal injury on a spouse. The trial court could have reasonably concluded that appellant's main objective in making the criminal threats was to so intimidate and frighten Aragon that she would do whatever he told her to do and would not try to escape. On the other hand, it is reasonable to conclude that, when appellant committed the other crimes of violence, his main objective was to physically

harm Aragon. Accordingly, the trial court did not violate section 654 by imposing consecutive sentences for the criminal threats, the misdemeanor batteries, the assault with a deadly weapon, and the crimes of inflicting corporal injury on a spouse.

False Imprisonment by Violence or Menace

During closing argument, the prosecutor argued that the false imprisonment began "from the moment [appellant] took [Aragon] up on that cliff and threatened to throw her off" and continued until she finally escaped upon reaching the highway.³ Appellant contends that section 654 required the trial court to stay the sentence on the false imprisonment conviction because his objective in committing that crime was "the same as the other crimes for which [he] was convicted." (Bold and some capitalization omitted.)

As to the elements of false imprisonment by violence or menace, the jury was instructed as follows: "To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant intentionally restrained or detained someone by violence or menace; [¶] AND [¶] 2. The defendant made the other person stay or go somewhere against that person's will. [¶] *Violence* means using physical force that is greater than the force reasonably necessary to restrain someone. [¶] *Menace* means a verbal or physical threat of harm, including use of a deadly weapon. The threat may be express or implied."

Substantial evidence does not support the trial court's implied finding that appellant's objective in falsely imprisoning Aragon was independent of his objectives in making the criminal threats and committing the misdemeanor batteries, the assault with a deadly weapon, and the crimes of inflicting corporal injury on a spouse. The false imprisonment was accomplished and facilitated by these threats and crimes of violence. For example, after appellant threatened to throw Aragon off the cliff, she "promised that [she] was going to do what he wanted."

³ Respondent reiterates the same argument in its brief: "There was only one act of false imprisonment. It began when appellant first threatened to throw the victim off the cliff and did not end until she reached the freeway"

Section 654 prohibits multiple punishment for crimes that were the means of accomplishing or facilitating the same objective. (*People v. Harrison, supra*, 48 Cal.3d at p. 335.) Thus, a defendant convicted of false imprisonment by violence or menace cannot be separately punished for both the false imprisonment and the crimes of violence or menace that effectuated the false imprisonment. Accordingly, we must modify the judgment to stay the sentence on count 6 for false imprisonment by violence or menace. The modification reduces the aggregate sentence for felonies and misdemeanors from 17 years, 4 months, to 16 years, 8 months.

Count 10: Battery on a Spouse

As we have previously explained, the battery charged in count 10 was based on appellant's acts of grabbing Aragon by the hair, dragging her six or seven feet, and throwing her down on the ground. The infliction of corporal injury charged in count 1 was based on the strangling of Aragon while she was on the ground. Appellant contends that the battery and the strangling constituted an indivisible course of conduct for which only one punishment may be imposed pursuant to section 654.

Based on *People v. Trotter* (1992) 7 Cal.App.4th 363, we disagree. The *Trotter* court held that section 654 did not preclude consecutive sentences for two assaults with a firearm where both "assaults were volitional and calculated, and were separated by [a period] of time during which reflection was possible." (*Id.*, at p. 368.) The *Trotter* court explained: "[I]f a defendant slashed his victim with a knife causing him to fall down, then paused, took out a gun and fired a fatal shot, no one could seriously dispute the fact each could be punished separately. If we change these facts, however, so that defendant, after pausing, plunges the knife into his victim, logic dictates the result should be the same. . . . [W]hen [a] defendant pauses and, having the option to land another blow or to break off the attack, chooses the former course of action, his culpability increases and his intent, though the same in kind, can be considered separate and distinct This, we think, is the more sensible approach and comports with the intent and meaning of section 654." (*Id.*, at p. 368, fn. 4.)

The reasoning of *Trotter* applies here. Substantial evidence supports the trial court's implied finding that, after dragging Aragon by the hair and throwing her to the ground, appellant had the opportunity to reflect on his actions and decide whether or not to continue his assaultive behavior by strangling Aragon. Appellant " 'should . . . not be rewarded where, instead of taking advantage of an opportunity to walk away from the victim, he voluntarily resumed his . . . assaultive behavior.' [Citation.]" (*People v. Trotter, supra*, 7 Cal.App.4th at p. 368, quoting from *People v. Harrison, supra*, 48 Cal.3d at p. 338 [*Harrison* court held that section 654 did not bar multiple punishment for defendant's three digital penetrations of victim's vagina where "*each of defendant's 'repenetrations' was clearly volitional, criminal and occasioned by separate acts of force.*" (*Ibid.*)]).)

Double Jeopardy

Counts 1 and 4 were based on the strangling of Aragon. The trial court stayed the sentence on count 4 pursuant to section 654. Appellant argues that, pursuant to the federal double jeopardy clause's prohibition against multiple convictions based on necessarily included offenses, he could not be convicted of count 4 (battery with serious bodily injury) because it is a necessarily included offense of count 1 (infliction of corporal injury on a spouse as enhanced with a great bodily injury finding). Appellant recognizes that our Supreme Court rejected the identical argument in *People v. Sloan* (2007) 42 Cal.4th 110, 123 [federal double jeopardy principles do not require enhancements to be considered when applying the multiple conviction rule to necessarily included offenses].) The Supreme Court's decision is binding on this Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)⁴

Disposition

The judgment is modified to reflect that the sentence imposed on count 6 (false imprisonment by violence or menace) is stayed pursuant to section 654. As modified, the

⁴ Appellant explains that he is raising the issue "to preserve his right to pursue federal review of the [Supreme] Court's interpretation of the double jeopardy clause in *Sloan*"

judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

NOT FOR PUBLICATION

YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Frank J. Ochoa, Jr. , Judge
Superior Court County of Santa Barbara

Lynn A. Woodward, under appointment by the Court of Appeal, for
Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D.
Martyneec, Supervising Deputy Attorney General, Robert S. Henry, Deputy Attorney
General, for Plaintiff and Respondent.